



Appeal Decision

Site visit made on 12 June 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 June 2017

Appeal Ref: APP/T5150/C/17/3170250

3 Kilburn Lane, North Kensington, London W10 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Haab Development Limited against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 25 January 2017.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a timber rear extension to the first floor of the premises.
- The requirements of the notice are: (1) Demolish the timber rear extension to the first floor of the premises; (2) Remove all resulting waste materials associated with the unauthorised development.
- The period for compliance with these requirements is one month.
- The appeal is proceeding on the ground set out in section 174(2) (c) of the Act. As the requisite fees have not been paid the deemed application does not fall to be considered.

Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Procedural matters

2. The appeal form gave the address to which the enforcement notice relates to be "*Flat 3, 41 Kilburn Lane*"¹. This address was then used in correspondence issued by The Planning Inspectorate [PINS]. However my inspection revealed that it is not the correct address. In this decision I shall instead adopt the address that is stated on the face of the enforcement notice, which corresponds with that shown on the plan attached thereto. In these circumstances there is no need to correct the enforcement notice. As a consequence of the wrong address being used by PINS on its correspondence it is appropriate to record that the Council Officer approached me in the vicinity of No 41 and I directed her to where we were scheduled to meet at the appointed time. I would like to make clear that no further discussion took place during that initial meeting.
3. The Appellant's representative indicated during the course of the site inspection that correspondence had been submitted to PINS on or around 23 May 2017 in relation to this appeal, which I had not received. I therefore made enquiries of my colleagues, as a result of which it was established that firstly the original email had not been received by PINS and secondly it had been submitted well outside the timetable for the submission of evidence. After being advised that there were no exceptional reasons for accepting this evidence², medical records were submitted. At this point a view was taken and the material was accepted whilst, at the same time, attention was drawn to the second reason that had already been given for not accepting the material, namely that it related to the

¹ See section D of the appeal form received on 23 February 2017 at 16:42 hours.

² Email from PINS to the Appellant's Agent on 15 June 2017 at 15:26 hours, which was copied to the Council.

planning merits of the development, despite the fact that the deemed planning application had lapsed. In the circumstances I propose to address the evidence below but, having made PINS position clear, there was no point in obtaining the Council's comments on material that was unrelated to the sole ground, (c).

Ground (c)

4. Under this ground of appeal the Appellant needs to show that: "*...there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. The Guidance makes clear³ that in an enforcement appeal the onus of proof in respect of matters of fact is on the Appellant.
5. It was agreed during the site inspection that the ground floor projection that exists at the rear of No 3 was pre-existing and the form that it takes is evident from what exists next door at No 1. What appears to have happened is that a wooden structure has been erected at first floor level, which fills the width of the plot and is slightly longer than it is wide. The wooden structure has a flat roof, which is covered in roof felt or similar material, and it is almost up to eaves level in height. It has no external openings on its southern or western faces and, on the balance of probability, noting it was not possible to see the other external face from Harrow Road, there appear to be no windows in the northern face of the structure either. Crucially it was agreed during the site inspection⁴ that the first floor of the property is in use as a flat or flats.
6. No case is made that the structure is not development within the scope of section 55 of the Act and whilst, for the avoidance of doubt, I have considered the possibility, even the Appellant's submission calls it a: "*...timber structure*". I note that the definition of "*building*" in section 336 of the Act: "*includes any structure or erection*". The Appellant's own choice of words therefore appears to confirm that what exists on the first floor of the premises is a building.
7. There is no explanation as to how the structure has been erected. However in light of what I saw I consider it more likely than not that the timber structure has been assembled on site from multiple pieces of wood to which roof felt has been added. The Appellant has not shown as a matter of fact that no building operation has taken place in order to give rise to the structure that exists. In the circumstances I conclude that there has been a building operation that has given rise to a building as defined in the Act.
8. On the limited information before me the precise date on which work on the structure was commenced is unclear. The Town and Country Planning (General Permitted Development) (England) (Order) 2015 [the 2015 Order] came into force on 15 April 2015. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations began. I therefore intend to deal with this appeal on the basis that the 2015 Order is the relevant Statutory Instrument, but even if the works commenced prior to 15 April 2015, the relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995 [the GPDO] are not materially different.
9. Article 2(1) of the 2015 Order defines "*dwellinghouse*" and says that it: "*does not include a building containing one or more flats, or a flat contained within*

³ See for example paragraph: 053, Reference ID: 16-053-20140306.

⁴ In the absence of being able to gain access to the premises concerned.

such a building". Given the acknowledgement that the property includes a flat or flats it is clear that the provisions of Part 1 of Schedule 2 to the 2015 Order, which grant deemed planning permission for, amongst other things, the enlargement, improvements or other alteration of a dwellinghouse, would not apply in this instance. The Appellant has advanced no basis that would lead me to conclude that the structure would be permitted development.

10. I conclude that since there has been a building operation that has given rise to an extension to a building that is in use as a flat or flats, for which there are no relevant permitted development rights, the ground (c) appeal must fail. In reaching this view I have noted the absence of any other sound reason why the structure does not comprise a breach of planning control, as alleged.

Other matters

11. I have taken account of the submitted petition, but in the absence of the deemed planning application fee having been paid I express no view on the contents thereof or the merits of the development that has been undertaken.
12. As PINS has already made clear the same applies to the sunlight assessment and the "*Urban Fabric*" report, which shows other examples with the inference that they are comparable to what has been built. I have noted the exchange of emails between the Appellant's Agent and a neighbour, but this has no bearing on the ground (c) assessment which is not concerned with the scheme's merits.

Conclusion

13. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice.

Pete Drew

INSPECTOR